

Application Serial No. 10/082,707
Amendment dated February 17, 2004
Reply to Office Action dated November 14, 2003

REMARKS

Claims 1, 7 and 9 have been amended, claims 43-46 have been canceled and new claims 47-51 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §§ 102, 103 and 112 rejections set forth in the Office Action dated November 14, 2003. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

The Examiner has objected to claim 43 in recitation of "a characteristics". Applicant has canceled claim 43. Accordingly, withdrawal of this objection is requested.

Claims 43-46 are rejected under 35 U.S.C. 112 first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the invention was filed, had possession of the claimed invention. Applicant has canceled claims 43-46. Accordingly, withdrawal of this rejection is requested.

Claims 43-44 are rejected under 35 U.S.C. 112, first paragraph, for enablement. Regarding the single gene conversion remarks of the Examiner, Applicant respectfully disagrees with Examiner regarding the unpredictability of the introgression of genes or genes into the genetic background of a different plant. The backcrossing breeding method is a reliable breeding method well known by a man skilled in the art of plant breeding. According to Hallauer, A.R. et al. (1988) "Corn Breeding" Corn and Corn Improvement, No. 18, pp. 463-481, backcross method of breeding is an important component of most breeding programs. The complexity of the backcross method depends on type of traits being transferred, but for single genes, the backcross method is effective and easy to manage. Therefore, Applicant submits that one skilled in the art, i.e., a plant breeder can readily use the squash line of the present invention for backcrossing leading to an 833 squash plant having all of the physiological and morphological characteristics of squash

Application Serial No. 10/082,707
Amendment dated February 17, 2004
Reply to Office Action dated November 14, 2003

inbred line 833 and further comprising a single gene conversion. For example, Applicant submits that the waxy (wx) gene is a recessive single gene that is used in corn breeding to create corn varieties where the starch content is 100% composed by amylopectin whereas normal corn contains 75% amylopectin and 25% amylose. Another example is the Opaque-2 gene which is another single gene used to produce High Lysine corn that contains increased levels of two amino acids -- lysine and tryptophane. Applicant submits that genes can be transferred by a person skilled in the art of plant breeding from one genetic background to another using backcross technique.

Applicant further submits R.W. Allard's 1960 book, published by John Wiley & Sons, Inc. "Principles of Plant Breeding", chapter 14. On page 150 of this reference, Professor Allard states that the backcross breeding method makes use of a series of backcrosses to the variety to be improved during which the character (or characters) in which improvement is sought is maintained by selection. Allard states the backcross will result in a variety with exactly the adaptation, yielding ability and quality characteristics of the recurrent parent.

Applicant submits that single gene conversion is a reliable method for breeding and for the introgression of gene(s) from one plant into the genetic background of a different plant. Applicant has canceled claims 43-44 in favor of new claims 48 and 49. Accordingly, withdrawal of this rejection is respectfully requested.

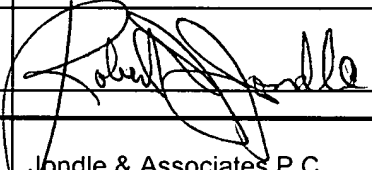
Claims 44-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103 as obvious over Miller et al. (US Patent 6,031,158). Miller et al. refers to a parthenocarpic hybrid while the present invention is not parthenocarpic. Applicant has canceled claims 44-46. Withdrawal of this rejection is respectfully requested.

Claims 44-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Superak (US Patent 5,959,184). Applicant has canceled claims 44-46. Accordingly, withdrawal of this rejection is requested.

Application Serial No. 10/082,707
Amendment dated February 17, 2004
Reply to Office Action dated November 14, 2003

Claims 44-46 are provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claim 6, 11-13, 15-17 and 19-33 of co-pending application No 10/082,706. Applicant has canceled claims 44-46 in favor of new claims 47-51. The hybrid plant of claim 51 can be used as tissue culture to produce additional hybrid plants. This hybrid of Claim 51 is sold commercially by Harris Moran Seed Co. and is publicly available from Harris Moran. Attached is a Terminal Disclaimer for co-pending application number 10/082,706. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§ 102, 103, 112 and the judicially created doctrine of obviousness type double patenting and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Robert J. Jondle, Reg. No. 33,915				
SIGNATURE				DATE	February 17, 2004
Address	Jondle & Associates P.C. Suite 200, 9085 East Mineral Circle				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898